IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 82 OF 2003

STATE OF GOA
(through the Police Inspector,
Pernem Police Station) ... Applicant.

versus

Shri Subhash s/o Budhaji
Sawant, r/o H.No.489,
Ashvem, Mandrem, Pernem,
Goa. ... Respondent.

Mr. A. N. S. Nadkarni, Advocate General with Mr. S. N. Sardessai, Public Prosecutor for the State.

Respondent absent, though served.

CORAM: P. V. HARDAS, J.

DATED: 10TH JULY, 2003.

ORAL JUDGMENT

This application under Section 482 of the Code of Criminal Procedure, is filed by the State, for expunging the remarks made by the learned Sessions Judge, North Goa, Panaji, in paragraph 3 of the Order dated 2nd January, 2003, in Bail Application No.418/2002.

2. Bail Application No.418/2002 was filed by the

present Respondent, who has chosen not to appear in this Court despite being served, praying for Bail under Section 438 of the Code of Criminal Procedure in respect of offences punishable under Sections 456, 380 r/w 511 of the Indian Penal Code. Paragraph 2 of the Order of the learned Sessions Judge, North Goa, Panaji, reveals that the learned Sessions Judge, North Goa, Panaji, held that the explanation of the two witnesses for remaining present at the scene of the offence at 2.00 a.m. appeared to be artificial. The learned Sessions Judge, North Goa, Panaji, further observed that it appears that the Complainant was trying to frame the Applicant therein on half baked allegations. In the application for Bail, it was averred that there was political rivalry between the Complainant and the Applicant therein. The learned Sessions Judge, North Goa, Panaji, accepted the Affidavit of the brother of the Applicant therein that the Police had informed the brother of the Applicant that there was political pressure from the local M.L.A. and that they have no option but to register an offence against the Applicant.

3. Accordingly, the learned Sessions Judge, North Goa, Panaji, in paragraph 3 of the Order has observed thus:-

> "The records of this case prima facie reveal that the

> police machinery is being freely misused by political masters to harass innocent persons. This is unfortunate. This type of political influence on the functioning of law enforcing authorities must be brought to end failing which people shall loose faith in the system of administration of justice".

4. Mr. A. N. S. Nadkarni, learned Advocate General has placed reliance on **State of Uttar Pradesh** v. **Mohammad Naim** AIR 1964 SC 703. The Hon'ble Supreme Court in paragraph 12 has held thus:-

> "It is a principle of cardinal importance in the administration of justice, that the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by any body, even by the Supreme Court. At the same time it is equally necessary that in expressing their opinions Judges and Magistrates must be guided by considerations of justice, fair play and restraint".

5. According to me, the observations made by the learned Sessions Judge, North Goa, Panaji, in paragraph 3 were wholly unnecessary while deciding the application for Anticipatory Bail filed by the Respondent herein. It seems that the learned Sessions Judge, North Goa, Panaji, has been guided by the fact

that the Police informed the brother of the Respondent that there was political pressure from the local M.L.A. and that the Police had no other option but to register an offence against the Applicant. The learned Sessions Judge, North Goa, Panaji, seems to have been impressed by the fact that the Police in their reply had not denied the serious allegations. The learned Sessions Judge, North Goa, Panaji, has referred to the records of the case revealing that the Police machinery has been misused by the Police Officer to harass innocent persons. The Learned Sessions Judge, North Goa, Panaji, firstly does not refer to the material which is disclosed from the record apart from some statement on Affidavit which is made in the Bail Application and which according to the learned Sessions Judge, North Goa, Panaji, was not denied by the Police in their reply. Apart from it, these sweeping observations were wholly unnecessary to determine whether the Applicant was entitled to the discretionary relief of an Order passed under Section 438 of the Code of Criminal Procedure. These sweeping observations in paragraph 3, referred to above, were not necessary for deciding the main controversy in the Bail Application and were also not necessary for the purpose of arriving at a decision whether the Respondent herein was entitled for an Order of pre arrest bail.

6. In the result, therefore, this Criminal Miscellaneous Application is allowed. The remarks quoted in paragraph 3 stands expunged. There shall be no order as to costs.

P. V. HARDAS, J.

RD.